

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER ☒ Amended on 05/26/2016

DATE: 05/26/2016

TIME: 02:00:00 PM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM:

CASE NO: **56-2014-00461060-CU-NP-VTA**

CASE TITLE: **P.Q.L Inc vs Revolution Lighting Technologies Inc**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Non-PI/PD/WD tort - Other

EVENT TYPE: Court's Motion (CLM)

APPEARANCES

Ruling on submitted matter regarding appointment of discovery referee:

In the court's tentative ruling issued on 5/13/16, the court stated:

"Pursuant to Code of Civil Procedure sections 639 and 640, the court is considering appointing a discovery referee in order to resolve the ongoing discovery disputes between the parties. The Court invites comments at the hearing regarding the appointment of a discovery referee. In anticipation of the possibility of the Court appointing a discovery referee, at the hearing on this matter, counsel should be prepared to submit an agreed upon referee name to the court, or, pursuant to section 640, each party shall submit to the court up to three nominees for appointment."

At the time the court published its tentative, the court contemplated the appointment of a discovery referee without the consent of the parties. However, at the hearing held on 5/16 and 5/19, all parties consented to the appointment of a discovery referee. The court has reviewed the transcript of the proceedings held on 5/19 wherein no objection was made to the appointment of a discovery referee. Mr. Carter on behalf of Defendant Cris Hayes, did not object to the appointment of a discovery referee on 5/19 and joined in the request that the Honorable John Zebrowski be appointed discovery referee. No issue as to inability to pay for the appointment of a discovery referee was raised at the hearing held on 5/19/16. No party has established an economic inability to pay a pro rata share of the referee's fee.

Although during the hearing held on 5/19/16 the court did not verbally express the findings set forth in paragraph three (3) of Plaintiff's proposed order, the court now makes those findings. At the conclusion of the hearing held on 5/19/16, the court invited counsel for Plaintiff to submit a proposed order by email and copy all parties. Mr. Kanter, Mr. Kidde, and Mr. Carter submitted email responses objecting to the

proposed order. The email exchanges regarding this matter have been printed and made part of the record as court exhibit number 1.

1. The court appoints a discovery referee to hear and determine the present and all future discovery disputes in the instant case. (*Code Civ. Proc.*, §§ 638, 639.) The retired Judge of the Superior Court identified below is appointed as Discovery Referee:

Hon. John Zebrowski
ADR Services, Inc.
915 Wilshire Blvd., Suite 1900
Los Angeles, California 90017
Tel: (213) 683-1600 x 35
Fax: (213) 683-9797

2. At the hearing held on 5/19/16, the parties did not oppose the appointment of a discovery referee and any belated objection to said appointment is waived.

3. In addition to finding that the parties consented to the appointment of a discovery referee, the court finds that there are exceptional circumstances which require a referee, including the following:

- a. The likelihood that discovery disputes will recur in the instant case;
- b. The probability that the resolution of the present dispute and/or those likely to arise in the future will consume undue amounts of the court's time and resources, to the detriment of parties and counsel in other cases; and
- c. Counsel's inability effectively to work out a reasonable proportion of their disputes without court intervention.

4. The Referee's hourly rate may not exceed \$725.00 per hour. No party has established an economic inability to pay a pro rata share of the Referee's fees, which shall be calculated by dividing the fees by the number of independent law firms of record.

5. Plaintiff's counsel has contacted the Referee and confirmed his ability to serve.

6. Counsel are to advance the Referee's fees equally, but the Referee is directed to include in his Report such re-apportionment of the costs of the reference as just, pursuant to Code of Civil Procedure § 645.1

7. Pursuant to Code of Civil Procedure § 644(b), the decision of the Referee is only advisory and the Court may adopt the referee's recommendations, in whole or in part, after independently considering the Referee's findings and any objections and responses thereto filed with the Court.

8. The Referee is ordered to submit a statement of awareness of, and compliance with, Canon 6 of the Code of Judicial Ethics and of the California Rules of Court, rule 244.2(c). Counsel contracting the Referee must advise him of this requirement. The Clerk is ordered to attach that statement to the original of this Order in the court file.

9. The Clerk is hereby ordered to forward a copy of this Order to the Presiding Judge of this Court and to the Referee.

Exhibits are identified on a separate list attached.

Emails from counsel regarding discovery referee proposed order is marked for identification as Court 1.

Notice to be given by clerk.

Judge Kevin DeNoce